

### **REMARKS**

Claims 1-84 were pending. The Examiner has rejected claim 83 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Without conceding that the Examiner had a proper basis for rejection, Applicants have canceled claim 83 to expedite prosecution of this application. Thus, claims 1-82 and 84 are now pending. The Examiner also rejected claims 1-84 under 35 U.S.C. §102(e) as being anticipated by Hamadeh et al. (U.S. Patent Publication No. 2004/0093521 A1).

In view of the following remarks, all claims are believed to be in condition for allowance over the reference of record. Therefore, this response is believed to be a complete response to the Office Action. However, Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including grounds of rejection and/or the separate patentability of the dependent claims not explicitly addressed herein, in future papers.<sup>1</sup>

Further, for any instances in which the Examiner takes Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR §1.104(d)(2) and MPEP § 2144.03.

### **Claim Rejections Under 35 U.S.C. §102**

A rejection under 35 U.S.C. §102(e) requires that the invention be described in:

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<sup>1</sup> As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The first element requires that the application for patent be filed in the United States before the invention by the Applicants. The Examiner's rejection of claims 1-84 under 35 U.S.C. §102(e) relies upon an application filed by Hamadeh on July 11, 2003. The present application by Applicants was filed on November 14, 2003, and properly claims benefit under 35 U.S.C. §119(e) to United States provisional patent application serial number 60/436,778, filed on December 27, 2002. Therefore, the effective filing date of the present application (December 27, 2002) is prior to the filing date of Hamadeh (July 11, 2003). Thus, the Hamadeh application is not a valid reference under 35 U.S.C. §102(e). Accordingly, Applicants respectfully request that the rejection of claims 1-84 with respect to the Hamadeh reference to be withdrawn.

### **CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 65632-0210 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to such deposit account number.

Dated: December 9, 2008

Respectfully submitted,

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